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LETTER DATED 8 MAY 1992 FROM THE PERMANENT REPRESENTATIVE OF CUBA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government, I have the honour to reiterate to you the request made in my communication dated 27 April addressed to your predecessor, for the convening, as soon as possible, of a meeting of the Security Council to consider the terrorist activities against Cuba promoted, encouraged or tolerated by the Government of the United States of America.

I should like to draw your attention to the fact that this is a formal request made by a State Member of the United Nations exercising its right under Article 35 of the San Francisco Charter, bearing in mind the obligation of the Council under Article 24 of the Charter. On the basis of that right and that obligation, since the inception of the United Nations there has been a well-established and generally respected practice which no member of the Council may ignore or seek to adulterate.

Seeing that the meeting still has not been convened, and with a view to providing further information to illustrate why the Council has a duty to examine this matter and take prompt and effective action, I am submitting below some information which I believe to be of interest. This information is, of course, not exhaustive. There are other important points which I will bring to the Council's notice when it sees fit to meet.

Regarding the efforts to prosecute and punish the actual perpetrators and the masterminds behind the in-flight destruction of the Cubana airliner on 6 October 1976

This barbaric act of sabotage affected several countries in the Caribbean Basin, as well as other States. The aircraft was leased to Cubana Airlines. There were 57 Cubans among the victims, including the entire crew and all the members of a fencing team which had just won the gold medal at the Central American and Caribbean Games in Caracas. The aircraft was blown up and destroyed. The remnants sank into the sea a few minutes after take-off from Barbados. The persons who planted the bombs on the sabotaged aircraft - both of them Venezuelans - were detained in Port of Spain by the Trinidad and

Tobago police. In Caracas, they had prepared the criminal operation under the direction of Orlando Bosch and Luis Posada Carriles, who were apprehended by the Venezuelan authorities. There were also 11 Guyanese and 5 Koreans who perished in the aircraft.

From the very day the crime was committed, the five Caribbean countries affected established the closest coordination and collaboration. That provided the framework for the international commission which met in Barbados to shed light on the technical characteristics of that brutal act of sabotage. From the moment Venezuela decided to institute criminal proceedings against the four suspects, the authorities in Barbados, Trinidad and Tobago, Cuba and Guyana furnished Venezuela with all the information, evidence and other useful data in their possession.

That was how, on the basis of precise and verified information, including admissions by the actual perpetrators themselves, it was possible to establish beyond any doubt: that the bombs were planted by Hernán Ricardo and Freddy Lugo; that immediately afterwards, they reported the accomplishment of their macabre mission to their chiefs, Orlando Bosch and Luis Posada Carriles; that the latter had knowledge of, and direct responsibility for, the terrorist action.

The criminal prosecution of those four individuals led to a long and haphazard trial that was peculiar in more ways than one. On 4 August 1987, 11 years after it began, the Venezuelan Eighth Superior Court of Criminal Justice found Hernán Ricardo and Freddy Lugo guilty, sentenced them to 20 years in prison and "acquitted" Orlando Bosch. The Court did not render any verdict concerning Luis Posada Carriles, because he had left his place of detention under circumstances that are also peculiar; technically, he was a fugitive from justice, although in fact he had resumed his terrorist business - with the assistance and protection of the United States authorities, he found a new home and was given new assignments.

The "innocence" of Orlando Bosch

At this time, I have no wish to voice an opinion on the Court's surprising decision to "acquit" Orlando Bosch. But I do think it necessary to stress that that in no way can be wielded as an argument for justifying impunity.

It is perhaps worth drawing attention to Orlando Bosch's strange behaviour: although his "acquittal" would seem to mean that he had been kept in prison for 11 years "unjustly" for a crime he had not committed, Mr. Bosch did not file any complaint or demand any kind of compensation. No sooner had he got out of prison in Venezuela than he began to organize his entry to the United States, where he finally arrived, without a visa, on 16 February 1988.

It might seem inexplicable that Mr. Bosch should choose to leave Venezuela, where he had been "acquitted" and released, in order to travel illegally to the United States, where he knew that he might have to stand

trial for other crimes. In fact, he knew what he was doing, he was confident that those who had always protected him would continue to do so. Subsequent events proved him right.

Orlando Bosch's arrival in the United States gave rise to legal and administrative proceedings in the course of which revelations came to light concerning his terrorist activities and, specifically, his responsibility for the sabotage of the Cuban aircraft. These revelations show clearly that the United States Government has information and evidence on this crime that was not handed over to the Venezuelan courts and is still being kept secret.

I can make available to members of the Council who wish to peruse it the text of the voluminous document - 233 pages in all - issued by the Venezuelan court on 4 August 1977. This document refers repeatedly to data and information supplied to the court by the authorities of the Caribbean countries mentioned above. The court does not once mention, either directly or indirectly, having received any information from the United States authorities.

What is the explanation for this? Could it have been that Washington knew nothing? Or was this part of its effort to obstruct the course of justice and protect the criminals?

I attach to this letter an official document of the United States Government which answers these questions. It was issued by the Department of Justice on 23 June 1989 and contains the decision of Mr. Joe D. Whitley, Acting Associate Attorney General, ordering Mr. Bosch's deportation.

As Mr. Whitley explains, his conclusions are based on a large quantity of non-confidential information, and an even greater quantity of confidential information, which is in his Government's possession and which is evidence of Orlando Bosch's long criminal career.

I should like to draw your attention to one of the pieces of confidential information to which this document refers and which appears in the first paragraph on page 10 of the annex. It reads: "... the October 6, 1976 Cuban airline bombing was a CORU operation under the direction of Bosch".

It is obvious, and its own Department of Justice says so in an official document, that the United States Government has evidence that Bosch directed the sabotage of the Cuban aircraft, that this evidence was never made available to the courts, that the Government has thus been protecting the murderers and that in so doing it placed the court of an honourable respectable country in the regrettable position of declaring "innocent" someone whom Washington knew and knows to be guilty.

United States conduct in this case simply confirms the belief that the United States Central Intelligence Agency was involved in the crime, a fact which can, moreover, be deduced from the confession of one of the convicted murderers as it appears in the dossier of the Venezuelan court (folios 10 to 12 of the tenth exhibit and folios 98 to 108 of the seventh exhibit).

Some statements by the United States, to the effect that the Council should turn down our request because of the years that have passed since the sabotage of the Cuban aircraft, are truly cynical.

The Security Council has an obligation to demand that the United States put an end to the cover-up and fulfil its obligation to see justice done at last even if it is 15 years after the event.

If it fails to do so, the Council's prestige will be one more casualty of this repugnant case.

Are there those who would have us believe that this crime can be ignored simply because it implicates a permanent member of the Council? Can it be ignored simply because the United States has spent 15 years covering up the crime and protecting the murderers?

Is this the way to combat international terrorism? Do they really believe that anyone would think so?

Note: Despite the arguments put forward by the Department of Justice in the decision of a senior judicial authority, Bosch was not in fact deported but released. This episode reflected on the credibility of the present United States Administration in its alleged opposition to terrorism. As Mr. Whitley warns: "We could not shelter Dr. Bosch and maintain our credibility in this respect".

I should be grateful if you would have this letter and its annex distributed as official documents of the Security Council.

I take this opportunity to convey to you the renewed assurances of my highest and most distinguished consideration.

(Signed) Ricardo ALARCON de QUESADA
Ambassador
Permanent Representative of Cuba
to the United Nations

Annex

[Original: English]

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

FILE: A28 851 622
A11 861 810

IN THE MATTER OF:

ORLANDO BOSCH-AVILA,

APPLICANT

In exclusion proceedings under section 235(c) before the Acting Associate Attorney General

Decision of the Acting Associate Attorney General

INTRODUCTION

Pursuant to my responsibilities as Acting Associate Attorney General, I have undertaken a review of the Immigration and Naturalization Service's (INS) decision of May 19, 1989 concerning the applications of Orlando Bosch-Avila for admission to the United States and for asylum. This review has included consideration of the decisions of the INS Regional Commissioner and the Commissioner, the submission of Bosch to the Regional Commissioner arguing against exclusion and requesting a hearing on his asylum application, and certain confidential and nonconfidential information respecting Bosch.

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For 30 years Bosch has been resolute and unwavering in his advocacy of terrorist violence. He has threatened and undertaken violent terrorist acts against numerous targets, including nations friendly toward the United States and their highest officials. He has repeatedly expressed and demonstrated a willingness to cause indiscriminate injury and death. His actions have been those of a terrorist, unfettered by laws or human decency, threatening and inflicting violence without regard to the identity of his victims.

The United States cannot tolerate the inherent inhumanity of terrorism as a way of settling disputes. Appeasement of those who would use force will only breed more terrorists. We must look on terrorism as a universal evil, even if it is directed toward those with whom we have no political sympathy. As a United States District Court has eloquently stated with respect to this very case, "the evils of terrorism do not become less because of the participants and the cause." Orlando Bosch Avila v. Perry Rivkind, 88-973-CIV-HOEVELER (S.D. Fla. June 1, 1988) (Order On Petition For Writ Of Habeas Corpus). See also Matter of Rivero-Diaz, 12 I & N Dec. 475 (BIA, 1967).

As a result of this review, the conclusion is inescapable that it would be prejudicial to the public interest for the United States to provide a safe haven for Bosch. I have moreover concluded that he is an alien excludable from the United States under 8 U.S.C. 1182(a)(27), (28)(ii), (28)(iii), (28)(iv) and (29), and that his applications for asylum and withholding of

deportation should be and herein are denied. In addition, pursuant to 8 U.S.C. 1225(c), and after consultation with appropriate security agencies of the United States, I conclude that disclosure of the confidential information upon which this decision is based would be prejudicial to the public interest, safety, or security.

BACKGROUND

Orlando Bosch-Avila, age 62, is a native, citizen and national of Cuba. On July 28, 1960, he was admitted to the United States as a nonimmigrant visitor for pleasure, with authorization to remain until August 28, 1960. Bosch, however, remained in the United States without permission until about April 12, 1974. He has never been granted lawful permanent residence status.

From about 1960 to 1968, Bosch was the leader of Movimiento Insurreccional de Recuperacion Revolucionaria (MIRR), an anti-Castro terrorist organization. On or about September 16, 1968, Bosch was involved in firing a shot from a 57 mm. recoilless rifle at the Polish vessel "Polanica", which was then docked at the Port of Miami. The shell hit the side of the "Polanica", causing damage to the vessel, but no loss of life. On November 15, 1968, Bosch was convicted in the United States District Court for the Southern District of Florida of various felony offenses arising out of the assault on the Polish vessel. At that time he was also convicted on an indictment that had charged him with

using the telegraph to convey threats: 1) to the President of Mexico to damage and destroy Mexican ships and planes; 2) to General Francisco Franco of Spain to damage and destroy Spanish ships and planes; and 3) to Prime Minister Harold Wilson of Great Britain to damage and destroy British ships. Bosch was sentenced to ten years imprisonment, paroled in 1972, and left the United States in 1974, thereby violating the terms of his parole.

Subsequently, Bosch, while outside the United States, founded and led Coordinacion de Organizaciones Revolucionarias Unidas (CORU), an anti-Castro terrorist organization which has claimed responsibility for numerous bombings in Miami, New York, Venezuela, Panama, Mexico, Argentina, and elsewhere.

In October, 1976, Bosch was arrested in Venezuela in connection with the October 6, 1976 in-flight bombing of a civilian Cuban airliner, which resulted in the deaths of 73 men, women, and children. Though detained in Venezuela for eleven years on charges arising from this incident, he was finally acquitted. At his trial, evidence was presented that the two men convicted of homicide in connection with the bombing were in contact with Bosch both before and after the bombing.

Despite being related to a number of United States citizens or permanent resident aliens who have sought to help him obtain lawful immigration status in this country, Bosch's applications for both immigrant and non-immigrant visas were denied in 1987 by the Department of State because of his criminal history and involvement in terrorism. Bosch, nevertheless, came to the

United States from Venezuela on February 18, 1988, without valid entry documents. Upon arrival, Bosch was taken into custody on an outstanding warrant for his 1974 parole violation, and he served an additional three months for this violation.

Upon release from criminal incarceration on May 17, 1988, Bosch was taken into custody by INS. At that time, the INS District Director in Miami served Bosch with a notice of temporary exclusion, alleging that he was excludable from the United States because:

- There is reason to believe he would seek to enter the United States solely, principally, or incidentally to engage in activities prejudicial to the public interest. (8 U.S.C. 1182(a)(27)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches the duty, necessity, or propriety of assaulting or killing officers of any organized government. (8 U.S.C. 1182(a)(28)(F)(ii)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches the unlawful damage, injury or destruction of property. (8 U.S.C. 1182(a)(28)(F)(iii)).

- That he is or has been an alien who advocates or teaches or has been a member of an organization that advocates or teaches sabotage. (8 U.S.C. 1182(a)(28)(F)(iv)).

- That there are reasonable grounds to believe that he probably would, after entry, engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national interest. (8 U.S.C. 1182(a)(29)).

In addition, the notice alleged that Bosch also is excludable on the grounds that he has been convicted of a crime of moral turpitude (other than a purely political offense), 8

U.S.C. 1182(a)(9), and that he did not possess valid entry documents. 8 U.S.C. 1182(a)(20).

Because Bosch appeared to be excludable under paragraphs (27), (28) or (29) of section 1182(a), the INS District Director in Miami, pursuant to 8 U.S.C. 1225(c) and 8 C.F.R. 235.8, referred the matter to the INS Regional Commissioner for review. Under section 1225(c) and its implementing regulation, the Regional Commissioner may order an alien excluded and deported, without a hearing before an immigration judge, if he is satisfied that the alien is excludable under paragraphs (27), (28) or (29) of 8 U.S.C. 1182(a) "on the basis of information of a confidential nature, the disclosure of which the [Attorney General's designee] in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security."

On May 19, 1989, the Regional Commissioner concluded, in what he described as a "close call," that the record did not establish that Bosch was inadmissable under 8 U.S.C. 1182(a)(27) or (29). He further concluded that while both confidential and non-confidential evidence indicated that Bosch may be excludable under 8 U.S.C. 1182(a)(28)(F), there was adequate non-confidential evidence available to obviate the need for excluding Bosch without a hearing. The Regional Commissioner's decision was affirmed by the Commissioner on the same day in a one-paragraph order.

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EVIDENCE OF EXCLUDABILITY

The files of the FBI and other government agencies contain a large quantity of documentary information which reflects that, beginning in the early 1960s, Bosch held leadership positions in various anti-Castro terrorist organizations. The information contained in these files clearly and unequivocally reflects that Bosch has personally advocated, encouraged, organized and participated in acts of terrorist violence in this country as well as various other countries. While some of this information is of a non-confidential nature, a greater quantity, both classified and unclassified, is of a confidential nature because of the need to protect intelligence sources and methods. The information presented for my review included all of the evidentiary materials made available to INS, the material submitted by Bosch to the Regional Commissioner, and additional classified information furnished by the FBI.

What follows is a brief descriptive inventory of some of the more significant non-confidential and confidential evidentiary items that form the basis of my decision. The description of the latter necessarily has been abbreviated and sanitized to protect its confidential nature.

NON-CONFIDENTIAL

- The record of the 1968 conviction in the United States District Court for the Southern District of Florida on charges arising out of the assault on the Polish vessel

"Polanica", and the threats conveyed by Bosch to leaders of other countries to damage ships and planes.

- An FBI interview of Bosch on August 22, 1963 concerning an August 15, 1963 MIRR bombing attack on a Cuban sugar mill.

- Documents reflecting that in June, 1974 Bosch publicly admitted having sent package bombs to Cuban Embassies in Lima, Madrid, Ottawa, and Buenos Aires. Apparently, the bomb sent to Lima injured an embassy employee, and the one sent to Madrid exploded and injured a Spanish postal employee.

- A letter entitled "Cuban Terrorism" by Orlando Bosch, issued in Prison in Caracas, January 1977.

- A radio interview of Bosch during his incarceration in Venezuela in which he advocated violent action against the Venezuelan government. Letters from Bosch to CORU requesting that Venezuelan property be bombed if he were not brought to trial.

- An interview of Bosch tape-recorded by the author of an article entitled "I Am Going to Declare War" which appeared in the news magazine "New Times", 5/13/77. Apparently, Bosch claimed CORU was responsible for over fifty bombings, but refused to take personal credit for terrorist actions within the United States because of "FBI heat".

- Excised classified documents relating to Cuban exile operations against Cuba in 1963.

- A statement by Bosch while in prison in Venezuela, to investigators for a committee of the U.S. House of Representatives investigating the assassination of President John F. Kennedy. According to the House Assassinations Committee, Bosch denied involvement in the 1976 Cuban civilian airliner bombing, but said that he approved of it. Declaring that terrorism is a necessary evil in the fight against Castro, Bosch asserted that "You have to fight violence with violence. At times you cannot avoid hurting innocent people."[1] Investigation of the Assassination of

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[1] The section of the Committee's report devoted to its investigation of Bosch concluded as follows: "Orlando Bosch, a zealot, turned out to be the most aggressive and volatile of the anti-Castro leaders. That alone could validly raise the question of possible association with the assassination of President Kennedy. In addition, the Committee was presented with an allegation that specifically linked him to a conspiracy, but

(continued...)

President John F. Kennedy: Appendix to Hearings Before the House Select Comm. on Assassinations, 95th Cong., 2nd Sess. 89 (1979)(submitted by Gaeton J. Fonzi, investigator, and Patricia M. Orr, researcher).

- The record of Bosch's trial in Venezuela on charges stemming from the mid-air bombing of a civilian Cuban airliner.

CONFIDENTIAL

- Information relating to Bosch's involvement, between 1961 and 1968, in more than 30 acts of sabotage and violence in the United States, Puerto Rico, Panama, and Cuba. These acts included the May 4, 1968 bombing of the British vessel "Granwood," the May 30, 1968 bombing of the Japanese vessel "Asaka Maru" and the June 1, 1968 bombing of the Japanese vessel "Mikagesan Maru".

- Information relating to Bosch's involvement in the attempted assassination of the Cuban Ambassador in Buenos Aires, Argentina in August 1975.

- Information relating to Bosch's involvement in the September 1, 1976 bombing of the Mexican Embassy in Guatemala City, Guatemala.

- Information relating to plans by CORU in 1977 to assassinate a high-ranking Cuban diplomat.

- Information relating to the organization and command structure of CORU, and reflecting that between June 1976 and March 1977, persons associated with CORU engaged in some 16 episodes involving bombings, attempted kidnapings, assassination and attempted assassination. These episodes occurred in the United States, Spain, the Caribbean, and Central and South America.

- Information reflecting that between 1974 and 1976 in Venezuela, Bosch was in possession of bombs, explosive materials and an automatic weapon.

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[1](...continued)
investigation failed to support the claim that Bosch had been in Dallas in November 1963 in the company of Lee Harvey Oswald. When asked, Bosch told the Committee he was at his home in Miami when he learned President Kennedy had been shot." Investigation of the Assassination of President John F. Kennedy: Appendix to Hearings Before the House Select Comm. on Assassinations, 95th Cong., 2nd Sess. 91-92 (1979)(submitted by Gaeton J. Fonzi, investigator, and Elizabeth J. Palmer, researcher).

- Information reflecting that the October 6, 1976 Cuban airline bombing was a CORU operation under the direction of Bosch.

- Information reflecting that Bosch, while incarcerated in Venezuela, ordered the bombing of Venezuelan facilities.

- Information reflecting that between 1979 and 1984, while incarcerated in Venezuela, Bosch was in contact with persons associated with CORU and other anti-Castro groups, and that during this period he advocated acts of violence and sabotage.

BOSCH'S SUBMISSION

In his reply to the order of temporary exclusion, Bosch has asserted that he does not intend to engage in any activity prejudicial to the United States, that he has always opposed bombing within the United States, that he currently does not favor the commission of violent acts in the United States, and that he has not come here to engage in espionage or any other subversive activity. He contends that he is now simply an old man who has learned lessons over the years, and he wants to be with his family and to escape the threat of assassination by agents of Fidel Castro. He advances additional claims respecting his past membership in organizations such as MIRR and CORU, respecting a limited exception to excludability based on such past membership, and respecting asylum.

Perhaps most notable in his submission is his repeated disavowal of any intent to commit violent or terrorist actions in the United States, while at the same time declining to disavow such activities elsewhere. Simply by looking to his own assertions here, it is evident that Bosch has not given up his

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personal and violent battle. He merely says he will not wage his "war" on our soil anymore.

CONCLUSIONS RESPECTING EXCLUDABILITY

Our exclusion laws specifically place the burden of showing admissibility on the alien. 8 U.S.C. 1361. The United States does not have to experience the harm to the public or to the national security that may be caused by aliens such as Bosch before they may be denied our hospitality.

Based on all of the information made available to me, both confidential and non-confidential, it is clear that for more than 30 years Bosch has been resolute and unwavering in his advocacy of terrorist violence. He has formed and led organizations whose purposes include precisely the actions declared to be grounds for exclusion in 8 U.S.C. 1182(a)(28). Over the years he has personally advocated and has been involved in terrorist attacks abroad and has advocated and been involved in bombings and sabotage. There is no substantial information to indicate that Bosch has renounced terrorism in the service of the cause to which he has devoted his life.

Despite his current assertions of opposition to violence in the United States, his personal history indicates that he will take violent action against any target if he believes it will advance his cause. At this moment, he may or may not truly believe that forsaking violent acts within the United States will advance that cause. But his behavior and beliefs are consistent,

and the evidence leads me inescapably to the conclusion that Bosch would instigate, plan, and participate in terrorist actions in the United States if and when it served his purposes. I therefore conclude that he is a threat to the national security.

From the foregoing it is evident that I do not agree with the suggestion in the Regional Commissioner's opinion that the exemption in 8 U.S.C. 1182(a)(28)(I) applies in this case. Even assuming that the exemption would ever be available where, as here, exclusion is based on advocacy or teaching of unlawful violence, as opposed to mere membership in an organization that so advocates or teaches, I do not believe the evidence supports Bosch's assertion that he is and has been "actively opposed" for the past five years to the doctrine and principles of the terrorist organizations of which he has been a member. Furthermore, I am utterly unable to conclude that his admission would be "in the public interest," as required under the exemption.

Furthermore, I am convinced that the Regional Commissioner substantially understated the weight of the evidence when he described the questions under 8 U.S.C.(a)(27) and (29) as being "close calls." The Regional Commissioner's decision cannot be squared with the indisputable and overwhelming weight of the record in Bosch's case.

The evidence leads me to conclude that Bosch seeks to enter the United States to engage in activities that would be prejudicial to the public interest and subversive to the national

security, as provided in sections (a)(27) and (29). This is so even if I were persuaded that Bosch would never commit a violent or terrorist act in this country. As he made plain in his most recent affidavit and his filings responding to the charges of excludability, he does not disavow terrorist acts committed outside the United States. Even if his repudiation were more universal and credible, Bosch would still be subject to the proscription of these sections of the statute. Indeed, his mere presence in this country, given his well publicized history of terrorist acts, would be prejudicial to the public interest and subversive to the national security.

More specifically, I conclude, based in part on information of a confidential nature, that:

1. Bosch is an excludable alien because there is reason to believe that he seeks to enter the United States incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States, 8 U.S.C. 1182(a)(27).

2. Bosch is an excludable alien both because he has personally advocated and taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Cuban government because of his or their official character, and because of his membership in MIRR and CORU. 8 U.S.C. 1182(a)(28)(F)(ii).

3. Bosch is an excludable alien because he has personally advocated and taught the unlawful damage, injury, or destruction of property, and because of his membership in MIRR and CORU. 8 U.S.C. 1182(a)(28)(F)(iii).

4. Bosch is an excludable alien because he has personally advocated and taught sabotage, and because of his membership in MIRR and CORU. 8 U.S.C. 1182(a)(28)(F)(iv).

5. Bosch is an excludable alien because there is reasonable ground to believe that he probably would, after entry, engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activity subversive to the national security, 8 U.S.C. 1182(a)(29).

6. The exemption in section 1182(a)(28)(I) is unavailable in a case where, as here, exclusion is based on active advocacy and teaching of violence, as opposed to mere membership in or affiliation with an organization that so advocates or teaches. The evidence here would not in any event allow Bosch to invoke that exception.

APPLICATION FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Inasmuch as I have concluded that Bosch is excludable and deportable, his application for asylum is properly before me for decision.[2]

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[2]While the regulations do not address specifically how an asylum application should be handled in the context of a section
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I have carefully reviewed Bosch's asylum application, together with its attachments. I consider it also as an application for withholding of deportation. For purposes of deciding whether or not to grant Bosch asylum, I assume, without deciding, based on Bosch's own representations, that there is a clear probability he will be subject to persecution if he is returned to Cuba. This assumption would allow Bosch to meet the lesser standard of a well-founded fear of persecution as that term is used in Section 101(a)(42) of the Immigration and Nationality Act, and thus to meet the threshhold test for the granting of asylum. 8 U.S.C. 1101(a)(42).[3]

Of course, even if an individual has established a clear probability of persecution in his country of origin, this does not end the inquiry as to whether an individual will receive asylum. The regulations provide for the discretionary consideration of other factors which may lead to the conclusion

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[2](...continued)
235(c) proceeding, I believe the regulatory framework taken as a whole clearly contemplates the adjudication of an aylum claim in the same forum as the adjudication of excludability. See 8 C.F.R. 208.1(b). Moreover, remanding Bosch's asylum claim to the District at this point would clearly frustrate the very purpose of the summary procedure provided in section 235(c). And, the Attorney General has specifically directed me to consider and dispose of Bosch's application for asylum and withholding of deportation.

[3] Given this assumption, there is no need to request an opinion from the Bureau of Human Rights and Humanitarian Affairs, as would ordinarily be appropriate if this matter were before the Immigration and Naturalization Service or the Executive Office for Immigration Review. 8 C.F.R. 208.7, 208.10(b).

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that asylum should nonetheless not be granted. In this case those considerations are dispositive.

Under the governing statute and its implementing regulations, withholding of deportation must be denied if an individual has been convicted of a particularly serious crime and, therefore, constitutes a danger to the community of the United States. 8 U.S.C. 1253(h)(2)(B). Bosch's 1968 conviction of a particularly serious crime by itself makes him ineligible for withholding of deportation. In addition, the conclusions reached in the foregoing section respecting Bosch's long history of support for and active participation in terrorist activities and organizations, confirms my belief that he constitutes a danger to the community. For these reasons, in the exercise of discretion, he is denied asylum.[4]

An additional ground for denial of asylum and withholding of deportation is that there are "reasonable grounds for regarding the alien as a danger to the security of the United States." 8 U.S.C. 1253(h)(2)(D), 8 C.F.R. 208.8(f)(1)(vi). Based on my review of the confidential information in this case, as described in previous sections of this opinion, I find that Bosch's presence in the United States does constitute such a danger.

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[4]Under the applicable regulations, the District Director is required to deny asylum to an alien convicted of a particularly serious crime. See 8 C.F.R. 208.8(f)(1)(iv). But see Arauz v. Rivkind, 845 F.2d 271 (11th Cir., 1988) (immigration judge must consider other evidence presented by alien as well as prior conviction in deciding whether aslyum will be granted).

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Finally, the confidential information considered in the course of adjudicating the exclusion order leads me to believe that Dr. Bosch has committed serious nonpolitical crimes outside the United States prior to his last arrival here. This too is a sufficient basis to deny his application for withholding of deportation and to support a discretionary denial of asylum. 8 U.S.C. 1253(h)(2)(C). See Matter of MacMullen, Int. Dec. 2967 (BIA, May 25, 1984).

Any of the three bases for denying asylum and withholding of deportation described above would be sufficient standing alone to bar Bosch from the relief he seeks. Considered cumulatively, they are more than sufficient to outweigh the consideration I have given to Bosch's fear of persecution. In light of Bosch's extensive involvement in terrorist activities and organizations, his declaration that he would not engage in terrorist activities in the United States is not credible. Further, even if he limited his activities to the advocacy of terrorist acts by others outside the United States, there is a substantial risk of retaliation aimed against this country or its citizens. The United States cannot grant shelter to someone who will, from that shelter, advocate the visitation of injury and death upon the property or person of innocent civilians. The security of this nation is affected by its ability to urge credibly other nations to refuse aid and shelter to terrorists, whose target we too often become. We could not shelter Dr. Bosch and maintain our credibility in this respect.

CONFIDENTIALITY

Pursuant to 8 U.S.C. 1225(c) and after consultation with the appropriate security agencies of the Government, I conclude that disclosure of the confidential information upon which I have relied would be prejudicial to the public interest, safety, or security.

CONCLUSION

For the reasons set forth above, it is this date hereby ORDERED that Orlando Bosch-Avila be excluded and deported from the United States. It is further ORDERED that his applications for asylum and withholding of deportation under 8 U.S.C. 1158 and 1253(h), respectively, be denied.

June 23, 1989
Date

Joe D. Whitley
Acting Associate Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached RESPONDENTS' NOTICE OF FILING OF DECISION OF ACTING ASSOCIATE ATTORNEY GENERAL were served on counsel for the petitioner, by first class mail, on June 30, 1989. The copies were mailed to:

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